

EXHIBIT 9-P
SAMPLE SUB-RECIPIENT AGREEMENT FOR AFFORDABLE HOUSING PROJECT
WITH MULTIPLE FUNDING SOURCES

CITY OF _____
_____, INC.
_____ PROJECT

THIS AGREEMENT ("Contract") dated this ____ day of _____ is a Sub-Recipient Agreement by and between the City of _____, hereinafter referred to as "the City", and _____, Inc. hereinafter referred to as "Sub-recipient, Inc."

WHEREAS, the United State Government, through the Housing and Community Development Act of 1974 ("the Act"), Public Law No. 93-383, as amended, has established a Community Development Block Grant ("CDBG") "CDBG/States" program and has allowed each state to elect to administer this program and such federal funds for its non-entitlement areas; and

WHEREAS, the United States Government, through the National Affordable Housing Act of 1990 ("the Act"), has established a Home Investment Partnerships ("HOME") Program and has allowed each state to elect to administer such federal funds for its non-entitlement areas; and

WHEREAS, the Montana Department of Commerce ("MDOC") is responsible for administering the "CDBG/States" and the "HOME" programs in Montana; and

WHEREAS, the City was instrumental in identifying the need for the affordable _____ housing project, cooperated in the preparation of the application for CDBG and HOME funds, and is identified in said application as the organization that will administer the CDBG and HOME portion of the proposed project ("Project"); and

WHEREAS, the MDOC has approved the City's CDBG and HOME Project applications through an award of funds; and

WHEREAS, Sub-recipient, Inc. will act as the controlling general partner in a limited partnership, a separate entity created for purposes of capitalization of federal Low Income Housing Tax Credits, and will own, operate and manage the Project known as the "_____ Project" (Penkay); and

WHEREAS, it is in the best interests of the City to administer the project through a contractual relationship; and

WHEREAS, the City desires to contract with Sub-recipient, Inc., and Sub-recipient, Inc. desires to contract with the City for the implementation of this _____ project to promote housing opportunities for _____ citizens generally having incomes at or below ____% of area median income; and

WHEREAS, Sub-recipient, Inc., as the controlling general partner of the limited partnership, agrees to operate, manage, and maintain the Project in a manner that will make its units available to all residents of the greater _____ area without regard to race, color, religion, creed, political ideas, gender, marital status, physical or mental disability, or national origin; and

WHEREAS, Sub-recipient, Inc. will network to make activities and services for the Project's clients available; and

WHEREAS, the parties to this Agreement understand that neither party has in any way abrogated any of its individual powers, and that this Agreement does not create any new organization or legal entity; and

WHEREAS, the City has concurrently entered into a CDBG Grant Contract MT-CDBG-_____ and a HOME Grant Contract M_____ ("Grants"), copies of which are attached hereto and incorporated herein as Attachment A, with the MDOC whereby the City will receive and administer CDBG and HOME monies to provide _____; and

WHEREAS, Sub-recipient, Inc. desires to obtain such financing for the Project and is willing to assist the City with obligations to the State under the Grants, as well as providing repayment of the Grants in a situation of default, under the terms and conditions as provided herein.

NOW, THEREFORE, for valuable consideration, the City and Sub-recipient, Inc. do mutually agree as follows:

1.0 ENGAGEMENT OF SUB-RECIPIENT, INC.

Sub-recipient, Inc. shall undertake the _____ and perform the services as set forth in the Grant Contracts between the City and MDOC, provided as Attachment A, and as listed in the CDBG- HOME Management Plan dated _____ provided as Attachment B, and also summarized under Scope of Services Part 2.0, which by this reference is made a part of this Agreement.

2.0 SCOPE OF SERVICES.

Initially, Sub-recipient, Inc. will enter into construction and professional service contracts for the Project in accordance with the Project Implementation Schedule as provided in Attachment A of the Grant Contracts between the City and MDOC. These construction and professional service contracts will need to be reassigned to the limited partnership during the course of construction to allow the utilization of capital funds provided by the limited partners for the construction of the project. All building plans and specifications will be between the service providers and Sub-recipient, Inc. Sub-recipient, Inc. will be involved in key construction management decisions through consultation with its Executive Director, the Sub-recipient, Inc. designated liaison and project manager, the project architect, the general contractor, and the fiscal director. Once the construction of the housing project has been completed, the limited partnership, of which Sub-recipient, Inc. (a non-profit arm of _____) shall be the general and controlling partner, shall be responsible for ownership and management of the affordable senior rental housing project.

Except for those responsibilities to be specifically performed by the City, Sub-recipient, Inc. is responsible for the administration of and compliance with the CDBG and HOME grants and will perform all the services listed in the CDBG-HOME Management Plan and CDBG and HOME Grants provided as Attachments A and B of this Agreement. The City agrees that Sub-recipient, Inc. may assign this responsibility to the controlling general partner if different than Sub-recipient, Inc. and the Limited Partnership, but Sub-recipient, Inc. will remain responsible to the City for compliance with the requirements of the CDBG and HOME grants secured by the City for Sub-recipient, Inc. for this project, and any subsequent assignment of responsibility does not release of Sub-recipient, Inc. from its responsibility under this agreement.

3.0 TIME OF PERFORMANCE.

This Agreement will become effective upon its execution. The Project will commence as soon as practicable after the execution of this Agreement and will be undertaken and performed in accordance with the schedule set forth in the Grant Contracts between the City and MDOC. Sub-recipient, Inc. agrees that time is of the essence in the performance of its obligations under this Agreement and that it will complete the Project no later than the termination date plus authorized extensions as set forth in the Grant Contracts between the City and MDOC.

4.0 PAYMENT.

The City will provide up to \$_____ through its CDBG grant and \$_____ through its HOME grant for _____ costs or all eligible project costs as identified in the CDBG and HOME Grant Budgets. It is expressly understood and agreed that in no event may the total payments to be paid to Sub-recipient, Inc. hereunder exceed \$_____ for all services required. Notwithstanding anything to the contrary herein, the City's obligation to make periodic or final payment is conditioned upon the receipt by the City of Project Grant funds sufficient to make such payment.

5.0 SURVIVAL OF CERTAIN CONTRACT TERMS

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance or compliance beyond the termination date of the Agreement will survive the termination date and will be enforceable by the City as provided herein.

The Period of Affordability (as defined by the HOME Program) for this project is 20 years; during which time Sub-recipient, Inc. agrees to monitor and report on the project as required by the FY 200_ edition of the HOME Program Administration Manual, a copy of which has been provided to Sub-recipient, Inc. and by this reference is a part of this Agreement.

6.0 CONDITIONAL AGREEMENT.

It is expressly understood by the parties hereto that this Agreement is dependent and conditioned upon the receipt by the City of Community Development Block Grant and Home Investment Partnerships Program funds from MDOC and that in event that said funds are not provided, the City incurs no responsibilities or liabilities under this Agreement.

7.0 TERMINATION OF AGREEMENT. This Agreement may be terminated as follows:

- (a) Termination due to loss of funding. This Agreement will terminate, in whole or in part, at the discretion of the City in the event that the MDOC reduces or terminates payments under the CDBG and/or HOME Programs so as to prevent the City from paying for the project with CDBG and/or HOME funds. In this event, the City will give Sub-recipient, Inc. advance written notice which sets forth the effective date of the termination and explains that the termination is due to a loss or reduction of the CDBG and/or HOME Program grants.
- (b) Termination for cause.

- (i) If at any time before the date of completion, one of the parties determines that the other party has failed to comply with any of the terms and conditions of this Agreement, the aggrieved party may give notice, in writing, to the defaulting party of any deficiencies claimed. The notice will be sufficient for all purposes if it describes the default in general terms. If the defaulting party fails to cure and correct all defaults claimed within a reasonable period to be specified in the notice, the aggrieved may, with no further notice, declare this Agreement to be terminated in whole or in part. It is understood that representatives of both parties shall enter into negotiations in an attempt to reach a solution that is mutually acceptable within 10 days of notification of termination, if such negotiations be requested in writing. If the defaulting party is Sub-recipient, Inc., it will reimburse the City any CDBG and HOME funds dispersed under this agreement.
- (ii) Notwithstanding the above, Sub-recipient, Inc. will not be relieved of liability to the City for any damages sustained by the City or the State by virtue of any breach of the Contract by the Sub-recipient, Inc., and the City may withhold any payment to Sub-recipient, Inc. for the purpose of setoff until such time as the exact amount of damages due the City or the State from Sub-recipient, Inc. is determined.

8.0 DOCUMENTS INCORPORATED BY REFERENCE.

The following documents, including any attachments and modifications are incorporated by reference herein:

- (a) The City application to the Department of Commerce for CDBG and HOME funding, dated _____, 200_ and _____, 200_ respectively
- (b) Attachment A - CDBG Grant Contract MT-CDBG-_____ and HOME Grant Contract M_____.
- (c) Attachment B – HOME/CDBG Management Plan, dated _____.
- (d) All applicable federal and state statutes and regulations are incorporated into this Agreement by this reference and are binding upon Sub-recipient, Inc.

9.0 RESPONSIBILITIES DELEGATED TO SUB-RECIPIENT, INC.

- (a) Sub-recipient, Inc. agrees to carry out the responsibilities assigned to it as stated in the project Management Plan.
- (b) Following the completion of the facility, Sub-recipient, Inc. will submit annual reports to the City, on a date to be specified by the City, unless later excused by new regulation or agreement. These annual reports will include:
 - 1) Sub-recipient, Inc. shall timely submit to the City performance reports according to the prescribed State form. The performance reports will be due on the same dates as required under the Grant Contracts between MDOC and the City. Failure to submit these reports by the specified time may be considered a breach of contract and action may be taken based on clause 7b of this contract. Reports will be submitted to: _____, City of

- 2) During the Contract period, the retention period and for as long thereafter as the records are maintained, at any time during normal business hours, the City, the State, or their authorized representatives, shall have the right of access to any books, documents, papers or other records of Sub-recipient, Inc. or Subcontractor with respect to all matters covered by this Contract in order to make audit, examination, excerpts, transcripts, and photocopies. Sub-recipient, Inc. shall collect such information and retain records on the Project in order to allow the City to fully comply with its obligation under the Grant to include the Project in an annual audit report as required under the Grant. A copy of Sub-recipient, Inc.'s annual audit, as well as a copy of its annual IRS 990 tax form shall be provided to the City.
- 3) Sub-recipient, Inc. shall provide proof of adequate insurance on the facility. During the construction period, this insurance shall include worker's compensation insurance, hazard insurance, liability insurance and performance/payment bonds. Following construction, during the operation of _____, the insurance shall include hazard and liability coverage.

10.0 PERSONNEL

Sub-recipient, Inc. represents that it has, or will secure, at its own expense, all personnel required to perform the services under this Agreement. All of the services required will be performed by Sub-recipient, Inc., or under its supervision, and all personnel engaged in the work must be fully qualified and must be eligible under the law to perform such services. Where the State or local public jurisdictions require licensure for the provision of services, Sub-recipient, Inc. and any subcontractors must be properly licensed therefore.

11.0 PROCUREMENT

All procurement transactions for supplies, equipment, and services will be conducted in a manner to provide, to the maximum extent practicable, open and free competition. Sub-recipient, Inc. will comply with all bidding and purchasing regulations of all applicable State and Federal laws and requirements.

12.0 CONFLICT OF INTEREST

- (a) In the Case of Procurement. In the procurement of supplies, equipment, construction and services by Sub-recipient, Inc. and its subcontractors, no employee, officer or agent of Sub-recipient, Inc. or its subcontractors shall participate in the selection or in the award or administration of a contract if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when the employee, officer or agent; any member of his immediate family; his partner; or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the party or firm selected for award. Officers, employees or agents of Sub-recipient, Inc. and its subcontractors shall neither solicit nor accept gratuities, favors or anything of monetary value from parties or potential parties to contracts. Unsolicited items provided as gifts are not prohibited if the intrinsic value of such items is nominal.

- (b) In All Cases Other Than Procurement. In all cases other than procurement (including the provision of housing assistance to individuals, the provision of assistance to businesses, and the acquisition and disposition of real property), no persons described in subparagraph i) below who exercise or have exercised any functions or responsibilities with respect to CDBG or HOME activities or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.
- (c) Persons Covered. The conflict of interest provisions of this paragraph apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of Sub-recipient, Inc. or of any designated public agencies or subcontractors receiving CDBG or HOME funds.

13.0 COMPLIANCE WITH APPLICABLE LAWS

At all times during the performance of this Agreement, Sub-recipient, Inc. shall strictly adhere to all applicable Federal and State laws, orders, and all applicable standards, regulations, interpretations, or guidelines issued pursuant thereto.

14.0 MONITORING AND EVALUATION

The City will monitor and evaluate this Agreement with Sub-recipient, Inc. under the Grants. The Agreement will be monitored for compliance with the rules, regulations, requirements, and guidelines, which the City has promulgated or may promulgate and will be monitored periodically during the operation of the Project and upon its completion. This Agreement will also be subject to monitoring and evaluation by MDOC, and the U.S. Department of Housing and Urban Development.

15.0 SEVERABILITY

To the extent that this Agreement may be executed and performance of the obligations of the parties may be accomplished within the intent of the Agreement, the terms of this Agreement are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of a term hereof may not be construed as waiver of any other term.

16.0 BINDING ON SUCCESSORS

Except as herein otherwise provided, this agreement will inure to the benefit of and be binding upon the parties, or any subcontractors hereto, and their respective successors and assigns. Sub-recipient, Inc. may not assign or otherwise pass on its responsibilities pursuant to this Agreement unless the City has in writing approved such assignment or assignment of responsibility.

17.0 EFFECTIVE DATE OF THE AGREEMENT

This Agreement takes effect when the following conditions are satisfied:

- (a) The Montana Department of Commerce and the City have executed the CDBG and HOME Grant Contracts;

- (b) The Montana Department of Commerce has approved the City's "Request for Release of Funds and Certification" from CDBG and HOME;
- (c) The attorney for the City and the attorney for Sub-recipient, Inc. have approved this Agreement as to form and content; and
- (d) The City Manager and Sub-recipient, Inc.'s Executive Director have each reviewed this Agreement and agreed fully to its terms and conditions.

18.0 DISPOSITION OF REAL PROPERTY, SITE IMPROVEMENTS AND EQUIPMENT.

- (a) Sub-recipient, Inc., as the controlling general partner of the limited partnership, will retain title, control and manage the CDBG and HOME assisted property after the completion of the project. The limited partnership will maintain the real property assisted under this Agreement for the sole purpose of providing safe, decent, and sanitary housing for low and very low-income senior households for a period of 30 years from the date of substantial completion of the apartment building.
- (b) Reversion of assets. Upon the expiration of this Agreement, Sub-recipient, Inc., as the controlling general partner of the limited partnership, will transfer to the City any CDBG or HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG or HOME funds. With respect to any real property or equipment under the limited partnership's control that was acquired or improved in whole or in part with CDBG or HOME funds in excess of \$25,000 the limited partnership will either:
 - i.. use the property to meet one of the national objectives contained in 24 CFR Part 570.901 for 30 years from the date of substantial completion of the apartment building; or
 - ii. dispose of the property in a manner that results in the City's being reimbursed in the amount of the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG or non-HOME funds for acquisition of, or improvements to, the property. Reimbursement is not required after the period of time specified in paragraph (a) of this section. The proceeds from such disposition will be subject to the applicable provisions of 24 CFR Part 570-504 (Program Income), 24 CFR Part 85.25 (Program Income), Part 85.31 (Real Property), and Part 85.32 (Equipment).

19.0 Program Income

All Program Income derived from the repayment of the low interest loans to the Project will be tracked by Sub-recipient, Inc. as required by CDBG and HOME regulations and reported to the funding sources on an annual basis and used in accordance with applicable CDBG and HOME guidelines.

20.0 CIVIL RIGHTS ACT OF 1964.

Sub-recipient, Inc. will abide by the provisions of Civil Rights Act of 1964 which states that under Title VI, no person may on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

21.0 SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974.

Sub-recipient, Inc. will comply with the following provision in that no person in the United States may on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with the funds made available under this title. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973 will also apply to any such program or activity.

22.0 SECTION 3 OF HOUSING AND URBAN DEVELOPMENT ACT OF 1968.

Sub-recipient, Inc. will ensure that to the greatest extent feasible, opportunities for training and employment arising in connection with this CDBG and HOME assisted project will be extended to lower income project area residents. Further, Sub-recipient, Inc. will, to the greatest extent feasible, utilize business concerns located in or substantially owned by residents of the project area, in the award of contracts and purchase of services and supplies.

23.0 MINORITY BUSINESS ENTERPRISE.

Consistent with the provisions of Executive Order 11246, Sub-recipient, Inc. will take affirmative steps to assure that minority businesses are used when possible as sources of supplies, equipment, construction and services.

24.0 NONDISCRIMINATION.

Sub-recipient, Inc. will comply with all applicable State and Federal laws, rules, and regulations involving non-discrimination on the basis of race, color, religion, national origin, age, handicap or sex. Sub-recipient, Inc. agrees to consider minorities or minority businesses as employees, specialists, agents, consultants or subcontractors under this Contract. Sub-recipient, Inc. agrees to comply with the letter and spirit of all applicable State and Federal law respecting discrimination and unfair employment practices.

25.0 REPORTS AND INFORMATION.

Sub-recipient, Inc. will maintain accounts and records, including personnel, property, and financial records, adequate to identify and account for all costs pertaining to this Agreement and such other records as may be deemed necessary by the City to assure proper accounting for all project funds, both federal and non-federal shares. These records will be made available for audit purposes to the City, its authorized representative, and will be retained for three years after receipt of final payment for the services rendered under this Agreement unless permission to destroy them is granted by the City.

26.0 ACCESS TO RECORDS.

It is expressly understood that Sub-recipient, Inc.'s records relating to this Agreement will be available during normal business hours for inspection by the City, MDOC, the U.S. Department of Housing and Urban Development, the U.S. Comptroller General, and when required by law, the Montana Legislative Auditor.

27.0 PLACE OF PERFORMANCE, CONSTRUCTION, AND VENUE.

The parties understand and agree that performance of this Agreement is in the County of _____ and that in the event of litigation concerning it, venue is the ____ Judicial District in and for the County of _____, State of Montana.

28.0 INDEMNIFICATION.

Sub-recipient, Inc. waives any and all claims and recourse against the City including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incidental to Sub-recipient, Inc.'s performance of this contract except for liability arising out of concurrent or sole negligence of the City or its officers, agents or employees. Further, Sub-recipient, Inc. will indemnify, hold harmless, and defend the City against any and all claims demands, damages, costs, expenses or liability arising out of Sub-recipient, Inc.'s performance under this Agreement, except for liability arising out of the concurrent or sole negligence of the City or its officers, agents or employees.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement this _____ day of _____, 200_.

CITY OF _____

APPROVED AS TO CONTENT & FORM:

By _____
_____ type name _____, City

Manager_By _____

_____ type name _____, City Attorney

Date

Date

_____, INC.

By _____
_____ type name _____, Executive Director

Date